



**State & Federal Contractors
Water Agency**

1121 L Street, Suite 802, Sacramento, CA 95814

May 6, 2011

Chairman Isenberg and Council Members
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Dear Chairman Isenberg and Council Members:

The State and Federal Contractors Water Agency (SFCWA) appreciates the opportunity to comment on the Third Draft of the Delta Plan. This new draft shows improvement from the Second Draft, however, there remain considerable problems too, as we will discuss below. We begin with somewhat generic and policy oriented criticisms and comments that reflect our view of where the current draft has diverged from the Delta Reform Act's policy direction. We then provide specific editorial and substantive suggestions to improve the content and clarity of the document. We incorporate by this reference, the content of multi-party letters that have been submitted to the Council over our and others' signatures pertaining to the Third Draft.

We remain very troubled that the draft Delta Plan as presently constituted is contrary to the fundamental intent behind the Delta Reform Act legislative package that created the Council and directed the development of a plan "providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem." [Emphasis added.] The tenor of the draft Plan is one which appears to embrace a fatalistic attitude toward water scarcity as California's inevitable destiny. The Plan is misguided in pursuing a regulatory approach that will in many ways exacerbate water management challenges and contribute to making the forecast of expected shortage a self-fulfilling prophecy. The Council should be constructing a Delta Plan that highlights what needs to be done to provide a more reliable water supply for California's future, not what needs to be subtracted from California's future to fit a vision that apparently includes, without basis, an aggregate reduction in water supplies from the Delta watershed serving the state as measured against a present day baseline.

The fact is nature provides California with plenty of water to meet its reasonable needs and improve the ecosystem in the Delta, if we manage water better, build facilities necessary to increase system operational flexibility and environmental protection, make local investments to help meet demands of a growing population, increase water use efficiency, address all important ecosystem stressors and adapt to the incremental changes in climate that will result over time in significant change from current conditions. Perhaps most importantly, to be successful in making the state's water supplies more reliable and available as we move forward in the coming decades, the Council can help refocus the public and much of the state's political leadership that doesn't make "water" a priority for California. As a Public Policy Institute report once stated, when the power goes out, you light a candle; when the

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water stops flowing, you move. California can't allow that to happen to the world's eighth largest economy, and the nation's agricultural leader. In many respects, rejuvenating the State's water system to meet the challenges of the 21st century is a national security issue, as well as a fundamental economic security issue for California.

We strongly recommend that the Council reassess the trajectory of all the drafts staff has provided and undertake a change of course, and in some instances a reversal of direction altogether, from what continues to be an overly broad brush regulatory approach lacking any viable central theme, to a Plan that in its initial iteration emphasizes recommendations for integrating current and planned agency actions while also identifying additional strategies that should be implemented to further the achievement of the coequal goals. The Council should then assess progress over its first five year planning horizon and refine the Plan as appropriate at its first update.

Paradoxically, at Page (P) 8 Lines (L) 2-9 there is a good statement of purpose regarding combining and coordinating activities of State and local agencies as the Delta Reform Act (Act) contemplates, yet as written, as with previous drafts, the Plan does not reflect what it claims to. Instead, it remains a top-down, regulatory regime focused on intruding into local decision making rather than providing guidance and support for local and state actions and investments that would further the achievement of the coequal goals. This intrusiveness might be somewhat more acceptable if specific investments were identified and promoted by the Council to improve statewide water supply reliability and undertake habitat restoration within the Delta and in its supporting watersheds, which could then be supplemented and complemented by the local initiatives delineated by the Plan, with monitoring and assessment of progress during Plan updates. Unfortunately lacking such elements, there is no basis or rationale for the intrusion currently contemplated in the draft.

Although the Plan attempts to delineate the reasoning behind its expansive geographic scope [P 13-15], it again says one thing in the descriptive introductory language setting out the foundations of the Plan, but then goes well beyond that description in the Plan itself. The Council does have some regulatory authority regarding consistency determinations of "covered actions", which are partially defined as taking place in whole or in part in the Delta. However, the Plan bootstraps prescriptions regulating local agencies' activities hundreds of miles away in the export service areas by asserting a nebulous nexus to "covered actions" as the authority to do so. This strains credulity and is again not consistent with the intent or direction of the Act. The implications of this are not thought through. This approach presumes that the Council has or will have the expertise and resources to objectively assess local agency action remotely connected to "covered actions" and it does not seem to acknowledge that there are literally thousands of actions per year that local agencies take that could be so construed to require conformance review. It is a recipe for failure and exponentially increases the potential for legal challenges that will delay the progress urgently need to move beyond the unsustainability of the status-quo.

Not all "covered actions" should be subject to the adaptive management requirements described in the Plan. There will be "covered actions" that as a practical matter simply won't be able to comply with all the Council is demanding because of the type and size of activity as well as the economic resources available to do so. The Council should require staff to identify which categories of "covered actions" should be exempt from such onerous, expensive and time consuming requirements. This is similarly a concern with regard to the imposition of the "best available science" and "long term financing" criteria contemplated in the Plan. Furthermore, the Council's adaptive management policy presents no criteria or standards by which compliance will be judged. To succeed, adaptive management must be a very

well defined and efficient process that eliminates the potential for arbitrary decisions, needless monitoring and/or modeling efforts, and endless submittals. If such a certification process is to be pursued, it needs to have specified review periods and an appeals mechanism. Finally, any contemplated policy or recommendation related to adaptive management should account for a “functionally equivalent” protocol to be deemed acceptable rather than trying to overlay new/different requirements on already developed and permitted adaptive management plans.

Another difficulty with the Plan’s treatment of “covered actions” is that at P 36 L 29 – 38 the Plan explains that despite the first threshold for being a “covered action” is that it must be a plan, program or project per CEQA, the numerous exemptions to CEQA (e.g. ministerial actions, one-year water transfers) will not be similarly exempt from being potential “covered actions”. This is both illogical and counterproductive. A project that is exempt from CEQA does not meet the threshold criterion of a “covered action” that it be a CEQA covered activity. In essence, by adopting this interpretation the Council is rewriting the Act and CEQA by fiat. We object. However, if the Council still feels compelled to reject CEQA’s exemptions with regard to the applicability of its “covered action” jurisdiction, an alternative option would be to direct staff to identify and provide the Council a rationale explaining which specific CEQA exempted projects (by statute or category), programs or plans should NOT be exempt from the Delta Plan definition of “covered actions” because of possible detrimental effects countervailing achievement of the coequal goals. The Council could then have a policy discussion about each category of CEQA exempted action and the potential to negatively affect the achievement of one or both of the coequal goals, and deciding to either reject the exemption or define specific parameters of concern related to them that should be addressed when the project, plan or program is implemented. Additionally, the Council, as part of this assessment and delineation could and should determine what “covered actions” would be considered “per se” consistent with the Delta Plan.

The scientific research discussion at P 30 doesn’t go nearly far enough. Instead of perpetuating the historically myopic scientific orthodoxy of the status-quo , with some possible modifications around the margins, the Council should heed the advice of Dr. Jeff Mount who told the Council on 4/29 that what was needed was a “Science Plan” not just a “Science Program”. A “Science Plan” developed with the assistance of the Independent Science Board (ISB) and stakeholders could dramatically increase the shared knowledge base regarding meaningful Delta management questions rather than continuing a smorgasbord approach that over thirty years has produced little to actually improve ecosystem management, and despite improvements of late isn’t integrated and doesn’t ask or investigate the questions which would lead to more effective management options. The ISB should be charged by the Council to formulate a “science plan” that would develop what would become the “best available science” for placing the value of water flows in their appropriate context among the full range of factors impacting ecosystem health in the Delta, as well as the impact of the latter on the supposed benefits of providing the former. Addressing this long-overdue void in the Delta management tool box would provide a basis for moving beyond the present scientific stalemate that has contributed to the gridlock the Council was intended to help break. Such a focused scientific effort will be particularly important in providing a sound technical foundation for the State Water Resources Control Board’s (Board) processes for reviewing and potentially revising the Water Quality Control Plan (WQCP) for the Bay-Delta, and the development of implementation strategies for achieving those objectives. The Act reserves jurisdiction over both of these processes and all other authorities of the Board to the Board explicitly [§85031(d)].

Central to achieving progress toward the coequal goals, and integral to satisfying the guidance included in §85302 of the Act is the determination of requirements for managing the timing and volume of water diversions in the Delta and its watershed, as well as related environmental flow and water quality

standards. However, decades of flow management alone has been proven ineffective as a regulatory approach and shows no promise of a miraculous turnaround, especially if continued in a vacuum where no other actions are taken to reduce other ecosystem stresses on the system. There is broad acceptance today that in addition to traditional rules and criteria constraining water diversions above, in and from the Delta, addressing and reducing the impacts of a multitude of other stressors on the system (e.g. water quality, invasive species, predation, loss of habitat etc.) is essential to improve the health and resiliency of the Delta ecosystem. Moreover, with respect to Central Valley salmonids, studies by the Pacific Fisheries Management Council have determined in recent years that ocean conditions are a substantial and potentially determinative factor affecting annual population variability. Life-cycle models are showing water project operations have minimal to no material impact on salmon species' health, while salmon smolt tagging studies are showing 90-98% of salmon smolt losses from the headwaters to the Bay are predation related, due to a system now dominated by non-native species. Indeed, to ignore these other factors and to overly depend or rely exclusively on mandating a particular increased flow regime could very well violate the California Constitution's prohibition against waste and unreasonable use and its command that "the water resources of the State be put to beneficial use to the fullest extent of which they are capable." [Article X, Section 2] Fundamentally, determining the proper balance between ensuring the beneficial use of the State's waters to their "fullest extent" and protecting and improving ecosystem health is at the heart of applying the Public Trust Doctrine to water management in the Delta and its watershed in the public interest.

Notwithstanding our concerns expressed below regarding the Plan's including unnecessary and prejudicial narrative related to the Board's potential deliberations, we do appreciate that the Plan appropriately acknowledges that the Board is the entity responsible for deliberating issues related to establishing flow standards and regulation of other stressors to implement a WQCP.

Fundamentally, the Council should be agnostic on the Board's exercise of its powers, except to expect that it carry them out consistent with the coequal goals, and should seek to address all stressors on the Delta ecosystem within the Board's reach. Unfortunately, the draft Plan does much more than that. Of particular concern to SFCWA is the tenor and content of Chapter 4.

We find it bitterly ironic that the chapter entitled "A More Reliable Water Supply for California" comes across as more of a despairing hospice care manual for California's water supply as it dwindles from being redirected to the environment rather than an affirmative plan for rehabilitating California's water management system and thus improving statewide water supply reliability. There is little in the chapter that reflects a positive approach to improving the water supply reliability of the export projects, which is central to improving the state's water supply reliability. Rather, much is included that implies a "strategy" of assuming reduced exports as the defining characteristic of the Delta Plan, and reducing reliance on those reduced exports so they can be reduced further, which bears no rational connection to any direction provided in the Act. It is as if the Council has determined that the coequal goals actually represent a "zero-sum" game where an improvement in the Delta ecosystem necessitates an absolute reduction in exports. We thought this issue had been resolved during the Delta Vision process where the management of the timing and volume of flows, enhanced through infrastructure investments and improved system flexibility, were found to be the tools used in a more sophisticated approach would also produce environmental benefit...

Exemplifying this predetermination and apparent bias in outlook, is the Plan's parroting the fable of flow as THE determinant of ecosystem health in the Delta when it discusses its recommendations and perspective related to the Board's upcoming process for reviewing and potentially revising the WQCP

for the Bay Delta. We are disappointed with this seeming retreat from the fundamental conclusion of the Delta Vision process that only a comprehensive approach, including infrastructure investments, that also takes action to address all stressors on the ecosystem can effectively enhance the environment in the Delta consistent with coequal goals.

The Plan's comments regarding the Board's standard setting process promote, without any analytical basis whatsoever, a management approach that would seek to re-establish the, or a, "natural hydrograph". This presumption as described is directly at odds with improving water supply reliability. Various alterations over the years in the watershed and the Delta, including significant human development and wastewater outfalls, terminal reservoirs to provide flood management and water conservation, multiple large upstream diversions, thousands of diversions within the Delta, and the large export facilities in the southern Delta, have made the notion of returning to a "natural hydrograph" a simplistic policy oasis that is really a mirage. The concept taken in any significant measure is incompatible with improving water supply reliability and should be discussed as only a concept to be evaluated for its compatibility with the co-equal goals. Instead, investment in new scientific understanding, facilities, reduction of stressors, habitat investments, and adaptive management of all of those tools, and others, should optimize variability in flow and salinity to the benefit of ecosystem functions while also meeting the coequal goal of improved water supply reliability, as well as contributing to enhanced water quality to protect human health and the environment.

The Plan also evidences its bias regarding the flow issue by asserting that "the average volume of water flowing into the Delta has been reduced by approximately 30 percent in the last 100 years" [P 9, L 36-38]. The obvious implication of this statement is that flows should be restored to or nearer to historic levels as a strategy for improving fishery and ecosystem conditions. This ignores the need to address all stressors, which in percentages terms such as this have changed in orders of magnitude greater than flow, and assumes more flow is the answer, despite the fact that regulatory requirements that have significantly increased flows into the system over the last two decades have not resulted in the expected ecosystem or fishery population improvements. Even more problematic, is the statement is wrong. Modeling analyses built upon an historic static condition that overlay annual diversions over time can result in a skewed result, such as the 30% reduction over baseline cited in the third draft. However, if one simply looks at the actual measurements of annual inflow year to year, they show little reduction in the long term average trend line over the last fifty years. While there certainly may be particular times over the years when the "natural flow" would have been more and other times when it would have been less than without the major water management facilities in place, describing this would require a more nuanced and detailed description than the generalized statement that is misleading and serves to reinforce the fallacy that reductions in flow over time must be the primary culprit contributing to the Delta's environmental decline. No doubt after reading the 30% reduction statement, a member of the public would be surprised to learn that during the months of July, August and September, Delta outflow since 1920 has actually increased significantly as a consequence of project reservoirs holding runoff in the system when it would otherwise have washed out to sea as spring melt leaving much less to flow into and through the Delta.

Over four years ago, the Public Policy Institute of California explained:

For the past 70 years, the state's policy has been to maintain the Delta as a freshwater system through a program of water flow regulation, supported by maintenance of agricultural levees. This strategy improved water quality for Delta agriculture and water

exports and was assumed to protect both native and desirable alien species (particularly striped bass). But most such species have not done well under this policy.

Thus, ecosystem issues are more about how the State has managed the flow through the Delta, not the gross amount of flow moving on average.

Envisioning Futures for the Sacramento–San Joaquin Delta, p. viii (2007). That statement and similar statements made by others are supported by ongoing scientific research. For example, in 2002, Dr. W.J. Kimmerer wrote:

The current state of knowledge about flow effects does not provide adequate support to decision making... All of [the] problems are shortfalls of knowledge that can be addressed through a program of research coupled with experimental manipulation of some aspects of freshwater flow.

Physical, Biological, and Management Responses to Variable Freshwater Flow into the San Francisco Estuary, p. 1286, *Estuaries* (December 2002).

Rather than maintaining and echoing the misguided overemphasis on flow considerations that has plagued the Board's process, the Council should encourage the Board to look at flow in the context of other factors impacting the health of the ecosystem as part of a comprehensive approach. For example, the long prevailing paradigm that inadequate flow is the fundamental factor affecting the Delta ecosystem has been called into question by a growing consensus that a complete compositional shift in the Delta food web is suspected to be the fundamental limiting factor. While changes in flow have occurred over the decades, variability – the dominant feature of the hydrograph – has not changed significantly nor has it been quantitatively characterized as a whole, and yet somehow, a theory has arisen and gained some traction in certain quarters that this is the new core causative factor in the Delta ecosystem's decline. Yet, the magnitude of these changes pale in comparison to changes in the food web. Food web changes include the virtual disappearance of key species to be replaced by invasives that now dominate the ecosystem. These changes show little relationship to changes in flow and strong relationships to changes in nutrients, which now appear to be the fundamental driving factor at the base of the food web. Basing development of a Delta Plan on the idea that flow is the fundamental factor when it is not will result in a complete failure to reach the co-equal goals.

At the end of the day, iconic catch-phrases like “natural hydrograph”, while easy to promote as “solutions” that are actually chimerical, cannot substitute for the hard and complex work of developing a truly comprehensive approach to flow management working under the real needs of a modern economy. The Council should develop targeted investment priorities for increasing scientific understanding, facilities, reduction of stressors, habitat restoration, and adaptive management of all of those tools, and others to improve flow and water quality management while also furthering the achievement of the coequal goals. In addition, the Council could and should contribute to the overall effectiveness of the Board's ultimate determinations by championing stressor reduction – i.e. identifying recommendations and actions that can be taken by other agencies (e.g. RWQCB, DFG, DBW, etc.) to supplement the benefits to the ecosystem of a potentially revised operational regime and other water management improvements.

Despite the forgoing discussion, we want to assure the Council that we do not believe that improvements in flow management are not desirable or that upstream diversions or project operations in the southern Delta do not affect the ecosystem. Our intent is to remind the Council that it should be diligent in staying true to the Delta Vision conclusion that only a comprehensive approach to ecosystem recovery can succeed and not fall into the trap of perpetuating what the Public Policy Institute identified as one of California's "water myths": that "more water will lead to healthy fish populations." Flows are a factor no doubt, but they are just one factor interacting with others in a complex system. Concentrating on flow, while refraining from seriously addressing other stressors will perpetuate thirty years of flow management failure and continue to have, the effect of throwing water at a problem that is ultimately wasteful, inefficient, ineffective, and counterproductive as it will result in a loss and diversion of resources more effectively directed toward a comprehensive solution.

The Plan's relatively lengthy discussion related to an asserted lack of transparency of State Water Project (SWP) contracts is unnecessary and reveals an apparent lack of understanding of how public the process is (see State Water Contractor Letter of May 6, 2011). Furthermore, the "Problem Statement" on P 52 L 28 – "Improved information needed on water use and management in California" -- strains credulity and is not even linked to the policy proposed regarding agreements. Agreements don't "manage" water, agencies do. And, with regard to the issue of transparency and the SWP, the contractor agencies' governing boards approve these agreements in public during noticed meetings and all contract amendments are required to go through the CEQA process that provides openness and transparency at its core. Furthermore, DWR plans additional public meetings regarding the contract amendment process. Another very problematic aspect of this proposed policy is the potential chilling effect and operational hindrance to water transfers, particularly short-term transfers, which are a critical tool for ensuring water supply reliability statewide, especially during periods of scarcity. This is also another example of the Council bootstrapping activities in the Delta to reach into areas not contemplated by the Act as integral to the Plan and attempting to exert regulatory authority well beyond its authority to do so, which will ultimately result in outcomes contrary to the co-equal goals.

With respect to the Plan's discussion of strategic levee investments, a central obligation of the Council per legislative direction in the Act, the current draft Plan remains fundamentally inadequate in "promoting strategic levee investments" and setting "priorities for state investments" as required by the Act. Instead, the plan abrogates responsibility by placing all priority setting responsibilities back on the "State". Strategic funding of levee improvements is absolutely essential, as the Act recognized, since it will be both horrendously expensive and environmentally short sighted to maintain the existing land uses and plan form.

The Plan takes the politically easy course and repeatedly supports greater investments in levee improvements, maintenance and emergency response. The plan fails to state that levee improvements must be commensurate with benefits and that Council will meet its charge to create a strategic levee investment plan which will identify the potential improvements with the greatest benefits so that funds can be prioritized. The Plan must recognize that some levees are not worth maintaining with public funds and that selected public levee investments should encourage the evolution of some islands to habitat. In short, the Plan drifts back to the state of affairs where scarce resources are spent ineffectively and disregarding long term consequences. The Council was given a direct charge to lead on this issue with a *strategic investment plan*, not just kick the can down the road, again.

SPECIFIC COMMENTS

P 8 L 5: "...reducing overall reliance on the Delta in [meeting California's future water supply needs](#)."

P8 L35-39: BDCP is **not** required to achieve recovery but must contribute towards recovery. Instead of the shorthand description of the BDCP's "purpose" the full text of the Planning Goals from the Planning Agreement is preferred over a synopsis to reflect the numerous outcomes of the BDCP.

"♦ **The Bay Delta Conservation Plan (BDCP):** An [applicant-driven](#), multi-stakeholder Habitat Conservation Plan/Natural Communities Conservation Plan process for the Delta has been under way since 2006. [As stated in the Planning Goals listed in the BDCP Planning Agreement: "The BDCP is intended to provide for the conservation and management of Covered Species within the Planning Area \(Delta and Suisun Marsh\); preserve, restore and enhance aquatic, riparian and associated terrestrial natural communities and ecosystems that support Covered Species within the Planning Area through conservation partnerships; allow for projects to proceed that restore and protect water supply, water quality, and ecosystem health within a stable regulatory framework; provide a means to implement Covered Activities in a manner that complies with applicable State and federal fish and wildlife protection laws, including CESA and FESA, and other environmental laws, including CEQA and NEPA; provide a basis for permits necessary to lawfully take Covered Species; provide a comprehensive means to coordinate and standardize mitigation and compensation requirements for Covered Activities within the Planning Area; provide a less costly, more efficient project review process which results in greater conservation values than project-by-project, species-by-species review; and provide clear expectations and regulatory assurances regarding Covered Activities occurring with the Planning Area.and has the dual purpose of achieving greater reliability to the water supplies through an improved Delta export water conveyance system, and required recovery of threatened and endangered species in the Delta.](#) The [BDCP](#) Bay Delta Conservation Plan is expected...."

Alternatively:

"♦ **The Bay Delta Conservation Plan (BDCP):** An [applicant-driven](#), multi-stakeholder Habitat Conservation Plan/Natural Communities Conservation Plan process for the Delta has been under way since 2006. ~~and has the dual purpose of achieving greater reliability to the water supplies through an improved Delta export water conveyance system, and required recovery of threatened and endangered species in the Delta.~~ [The BDCP has many goals that are all consistent with and will further the achievement of the coequal goals](#) {insert footnote with text provided above setting forth the Planning Goals listed in the Planning Agreement}, [while addressing a number, but not all, of the component parts of the Delta Plan as specified by the Act.](#) The ~~BDCP Bay Delta Conservation Plan~~ is expected...."

P 8 L 39: Statement that BDCP will be "complete by 2012" is wrong. At this time it is not expected BDCP will have its permits and final DFG certification of consistency with the Delta Reform Act until after 2012. Suggest "The [BDCP will not be completed until after the first Delta Plan is adopted by the Council.](#) ~~Bay Delta Conservation Plan is expected to be complete by 2012.~~ The Delta Stewardship Council...."

P 9 ¶ starting L 4: Additional plans to include in the listing here are Delta Counties Hazard Mitigation Strategy and the Delta Protection Commission's Land Use/Resource Management Plan.

P9 L 12-16. We suggest reframing this language to focus on the planned positive benefits of the Delta Plan, rather than being couched as preventing negatives, as follows:

“Accordingly, the Delta Stewardship Council has determined that the first step toward achieving the coequal goals is to ensure that ~~avoid adverse impacts on the Delta (“covered actions” :)~~ ~~or the coequal goals from:~~

- ◆ ~~Actions that further erode~~ Protect the beneficial uses of water and do not hinder the attainment of a more reliable water supply for the state; ~~reliability water quality;~~
- ◆ Are consistent with the sustainable management of ~~the Actions that further degrade~~ the Delta ecosystem; and ~~or~~
- ◆ Reduce risks ~~Actions that increase risk~~ to people, property, or statewide interests.”

P 9 L 18: Whenever reference is made to the state policy to “reduce reliance” it should always include the full phrase in the statute: i.e., “reduce reliance on the Delta to meet future water supply needs”.

P 9 L 37: The statement regarding a 30 percent reduction in average annual flows into the Delta should be replaced with: “At the same time, the natural hydrology of the Delta watershed has been altered through the construction and operation of facilities and reservoirs to provide flood management and protection and to capture and release snowmelt for water supply purposes. This has resulted in diversions of flows for other purposes from less than 10 percent in wet years to about 50 percent in dry years, versus pre development conditions.” The blanket 30 percent statement could be read to imply such a reduction in inflow at all times, which is not the case.

P 9 L 39: These facilities also provide significant flood protection for the Sacramento Valley and Delta, as well as along the San Joaquin River, which should be acknowledged too.

P 10 L 31: “Although groundwater and surface water are ~~part of an~~ interconnected ~~system in some locations,~~ California’s system of local groundwater management is exercised independently of the State Water Resources Control Board, which has no ~~clear~~ direct authority to ~~manage~~ regulate groundwater. While groundwater management in the state is often well done, localized areas suffering from unsustainable overdraft and deficient management should be the focus of improved management efforts. Overall, sustainable management of groundwater resources and the potential for increased conjunctive use should be the focus of investments to optimize the state’s often limited and variable water supplies to improve water management and supply reliability statewide.” Note that the SWRCB has no “authority” to “manage” any water; they regulate its use and are the arbiter of water rights.

P 10 L 37: Seismic risk should be mentioned as potential cause of catastrophic failure too.

P 12 L 2: “...reasonable water use, ~~and~~ no waste, and maximizing the beneficial uses of the state’s waters are fully effectuated ~~enforced~~. California....” It is important to include the Constitutional provision regarding use of the state’s waters to their “fullest extent” and the use of “enforced” is a more negative term than the positive and aspirational “effectuated”.

P 12 L 7: “...past century. Use of all water for all beneficial uses, in all parts of the Delta watershed, is consistent with the coequal goals and ~~W~~water is exported from the Delta in a manner that has ~~is~~ less impact ~~harmful~~ on the ecosystem, has improved drinking water quality, and is more reliable than at the beginning of the century. Robust, real-time and relevant information about water use....”

P 12 L 10: An aspiration for leading the nation in water use efficiency and sustainable water use in 2100 is an ambitious target itself. There is no need to arbitrarily “pick a number” as the measure of that

success. Designation of a 50 percent reduction in urban per capita water use is simply stated without any analysis of the feasibility or implications of such a goal or the provision of a baseline from which it is to be measured. A better alternative after stating the general goal would be: ~~“Water use by all segments of the economy is reduced, and u~~Urban per capita water use ~~is~~ has continued to be reduced from the levels achieved in 2020 as a result of local water management programs, plumbing code changes and legislation establishing new conservation targets for 2050, 2075 and 2100. Similar efforts have resulted in continued improvements to agricultural water use efficiency reflecting best practices and market conditions.”

P 12 L 15: “California is less ~~dependent~~ reliant on water supply from the Delta.” This use of “dependent” should be eliminated throughout the document. “Dependent” and “reliant” in the context of water management are not the same thing. An area that is less “reliant” on imported water because of various investments in meeting service area demands is still “dependent” on Delta imports as a key component of an overall water supply portfolio, even though it can manage its system without receiving 100% of imports 100% of the time. The implication of saying less “dependent” is potentially a viewpoint that a reduction in exports from the present baseline, as a predetermined goal, is practical and feasible. This is not the case. Even in the case of West Basin Municipal Water District, which discussed its goal of reducing its dependence on imports significantly over the coming decades, expressed that as a percentage of its overall water supply requirements, not necessarily a reduction in the actual volume of imports it was relying upon in its planning. And, as a MWDSC member agency, any water it decided it didn’t need from the Delta would simply go back to the MWD pool for those who do not have physical options such as those in West Basin resulting in no change in Delta diversion, while still, overall, resulting in less reliance on the Delta due to an increase overall in local water resources. And even if all members within MWD were able to mimic West Basin, which is physically impossible, saved water would accrue to other State Water Contractors in all but wet years, not the Delta. Again, reliance on the Delta is reduced but diversions are not and the region remains dependent on supply available from the Delta. Ultimately, use of “dependent” rather than “reliant” creates a false expectation or impression that is not consistent with how water management works in the export service areas. As both Councilmember Fiorini and Chairman Isenberg stated at the Council meeting on 4/29, those imported supplies are foundational to the agencies in the export service areas and are essential to provide the footing upon which to pursue local resource investment such as recycled water projects.

P 12 L 23: “...flows ~~following a more natural hydrograph~~ reflecting a more refined, efficient, effective and targeted approach to their volume and timing are ~~now dedicated~~ managed to ~~support~~ contribute to a ~~healthy~~ healthier, more resilient ecosystem.”

P 13 L 8: Should insert a “near-near” term timeframe set at 2015.

P13 L 22-35 and P 15 L1-15: The text on Geographic Scope and Use of the Delta Plan is overly broad and does not describe geographic scope within the varying contexts described in the legislation. We propose replacing the existing text with the text below, which is intended to describe the geographic scope of the Delta Plan as addressed in the legislation, as well as the Delta Stewardship Council’s scope of authority in a geographic context.

“The Delta Reform Act addresses the geographic scope of the Delta Plan in three contexts: a) ecosystem restoration; b) covered actions; and c) promoting statewide water conservation, water use efficiency and sustainable use of water. Ecosystem restoration and covered actions are focused on the Delta and

Suisun Marsh, collectively referred to as the “Delta”, while statewide water conservation, water use efficiency and sustainable use of water necessarily have a broader geographic setting.

Ecosystem Restoration

The geographic scope of ecosystem restoration projects and programs is the Delta, but may include projects outside the Delta that contribute to the achievement of the coequal goals (85302(b)). This area is featured on Figure 1-1 as the “Statutory Delta and Suisun Marsh”, or the Primary Planning Area, but may also encompass projects within the “Delta Watershed Area”.

Covered Actions

Covered actions are explicitly limited to certain actions that occur within the boundaries of the Delta. Covered actions must be consistent with the Delta Plan, and are defined as:

“...a plan, program, or project as defined pursuant to Section 20165 of the Public Resources Code that meets all of the following conditions:

- 1. Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh;*
- 2. Will be carried out, approved, or funded by the state or a local public agency;*
- 3. Is covered by one or more provisions of the Delta Plan;*
- 4. Will have a significant impact on the achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.” (Water Code section 85057.5)*

Certain actions are exempted from the definition of “covered action,” including a regulatory action of a State agency, routine maintenance and operation of the State Water Project or the federal Central Valley Project, or local public agency routine maintenance or operation of any facility in the Delta (Water Code 15 section 85057(b)). In addition, plans, programs, and projects that are themselves exempt from CEQA would not be considered to trigger a “covered action” certification assessment.

Water Conservation, Water Use Efficiency and Sustainable Use of Water

Water conservation, water use efficiency and sustainable use of water have the broadest geographic context. The legislature called for a statewide strategy of investments in improved regional supplies, conservation, and water use efficiency, while calling on regions that receive water exported from the Delta watershed to improve regional self-reliance and thus reduce reliance on those water supplies in meeting future water supply needs (Water Code section 85021). This wider geographic context encompasses the Secondary Planning Area, including the Delta watershed, the Upper Trinity River Watershed, and areas outside the Delta in which exported water is used.

Geographic Scope of Delta Stewardship Council’s Authority

The Delta Stewardship Council is charged with tracking progress in meeting the objectives of the Delta Plan on the health of the Delta’s estuary and wetland ecosystem, as well as the reliability of California’s water supply imported from the Sacramento River or the San Joaquin River watershed (Water Code sections 85211(a) and (b)). The Council’s regulatory authority is restricted to hearing appeals on determinations made by local and state agencies that covered actions are consistent with the Delta Plan.”

~~Because California's water supply reliability and Delta ecosystem concerns are united in the Delta, the geographic scope of the Delta Plan must include areas that divert water upstream of the Delta and those areas that export water from the Delta. This is virtually the same planning area used for the CALFED Bay-Delta Program.~~

~~The scope of the Delta Plan encompasses the Delta and Suisun Marsh, the Delta watershed, and areas of the state that use water from the Delta watershed, as shown in Figure 1-1. The Primary Planning Area includes the statutory Delta (as defined by the Delta Protection Act of 1992) and the Suisun Marsh. For the purposes of the Delta Plan, the Delta and the Suisun Marsh are collectively referred to as the "Delta," unless otherwise specified.~~

~~The Secondary Planning Area includes the Delta watershed, the Upper Trinity River Watershed, and areas outside the Delta in which exported water is used. In setting these boundaries, the Delta Stewardship Council recognized that the Sacramento-San Joaquin Delta Reform Act of 2009 requires that the Delta Plan address certain statewide water issues that are vital to sustainable management of the Delta (see, for example, Water Code sections 85020(a),(d),(f), and (h) 85302(b), 85303, 85304, and 85307 (a)).~~

~~The Delta Plan contains both regulatory policies, which are mandatory, and recommendations that are discretionary. Covered actions must be consistent with the plan's regulatory policies. Covered actions are defined as:~~

~~"...a plan, program, or project as defined pursuant to Section 20165 of the Public Resources~~

~~Code that meets all of the following conditions:~~

- ~~1. Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh;~~
- ~~2. Will be carried out, approved, or funded by the state or a local public agency;~~
- ~~3. Is covered by one or more provisions of the Delta Plan;~~
- ~~4. Will have a significant impact on the achievement of one or both of the coequal goals~~
~~or~~
~~the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta." (Water Code section 85057.5)~~

~~Certain actions are exempted from the definition of "covered action," including a regulatory action of a State agency, routine maintenance and operation of the State Water Project or the federal Central Valley Project, or local public agency routine maintenance or operation of any facility in the Delta (Water Code 15 section 85057(b)).~~

P 15 L 36: Not all covered actions should have to describe how they will apply the adaptive management framework as they will be small projects with one-time impacts. "Proponents of certain proposed covered actions...."

P 16 ¶ starting L 11: Suggest including Delta Protection Commission's Land Use/Resource Management Plan too.

P 16 L 23: "If the Delta Stewardship Council, upon appeal of the Department of Fish and Game's (DFG) certification finds that the Bay Delta Conservation Plan ~~fails to meet~~ satisfies the statutory criteria for its inclusion in the Delta Plan, finds DFG's determination unreasonable, then..." The Council's role on

appeal, as Chairman Isenberg correctly articulated at the Council meeting on 4/29, is to review the DFG's certification determination, not to undertake its own assessment of the BDCP, which is how this language currently reads and which is inappropriate.

P 28 L 1: "Guidelines and Criteria" Same comment as described for P 15 L 36 i.e. not all covered actions should trigger the adaptive management framework and the Plan should articulate which would and wouldn't.

P 35 L 24: Suggest adding either a sentence or adding as a footnote that if the BDCP is incorporated into the Delta Plan then although it would include some actions that would satisfy the definition of "covered actions", because it and they would be a part of the Delta Plan all such activities would be by definition consistent with the Delta Plan and not subject to a consistency determination. This would help define the "interconnections" between the Delta Plan and the BDCP for the reader.

P 37 L 11-16: The Council's definition of "significant impact" – a "substantial or *potentially* substantial change in existing conditions that directly, *indirectly* and/or *cumulatively* caused by a project and that will or *may* affect the achievement of one or both of the coequal goals." -- is an extreme embellishment of that Act's simple language regarding this component of the "covered action" criteria that merely includes an action that "will have a significant impact on achievement of one or both of the co-equal goals...." An action's impact must be an impact, not a potential, indirect, or cumulative one and not one that only may occur. This language should be deleted and the focus should be shifted to describe what an actual significant impact would be in relation to the coequal goals. Because the current approach to "covered actions" is being defined in a manner that the Council asserts authority to reach to activities essentially throughout the State, the potential for severe unintended consequences of this "definition" are manifold. .

P 40 L 31-33: "...have large impacts on the Delta ~~and would affect as it contributed to the achievement of~~ the coequal goals. However, ~~completion and full implementation of the~~ because the Bay Delta Conservation Plan does not address a number of required components of the Delta Plan, its completion and full implementation is not equivalent to satisfying the Act." This change will further and more clearly illustrate the BDCP's interconnection and relationship to the full Plan.

P 44 Citation to §85302(c) is incorrect; it should be 85302(d). In addition, at the bottom of the page, the quotation from Article X, Section 2 of the Constitution should include its entirety, i.e. including "It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water...." This Constitutional provision is not solely focused on preventing unreasonable use but also on the "beneficial use to the fullest extent of which they are capable", a directive too often forgotten.

P 45 L 5-6: "A few areas of ~~T~~the state unsustainably ~~uses~~ more groundwater than nature replenishes (Department of Water Resources 2009)."

P 45 L 17-19: "...and agricultural areas that have water needs. These systems were designed during the mid 20th century with a societal focus on meeting the needs of an expanding population and economy of the state, with little or no consideration of the impacts ~~minimal consideration of the harm that this~~

~~water storage and delivery system were not these water diversions could cause~~ to the environment and native fisheries. ~~As a result,~~ Along with many other stressors, this has contributed to the alteration of California's native Delta ecosystem to the detriment of various species of concern ~~is in decline.~~

P 45 L 23: "...regional reliance on Delta exports to meet future water supply needs (Water Code section 85021)."

P 45 L 24: We object to the use of the term "control water demand" and making an unsubstantiated and blanket determination that that would be part of a "responsible plan to improve water supply reliability." This is overreaching through inventive terminology that is inconsistent with the language of the Act, which simply said to "promote" water conservation. Frankly, the plain meaning of "control water demand" turns the coequal goal of improving water supply reliability on its head. The Legislature's intent in the Delta Reform Act was not to deliver less water "reliably", we can do that already; the intent was to increase the capability to deliver more water more often (see Water Code 85302 (d)(1)) while still "protecting, restoring and enhancing the Delta ecosystem" as a consequence of investments in infrastructure and facilities to increase operational flexibility, as well as habitat expansion and comprehensively attacking stressors on the Delta. The notion of "control" of water demand is illusory and smacks of the regulate-first approach the Third Draft still represents too often. Working with water agencies to implement improved "demand management", which is not a stand-alone strategy but one of many tactics in integrated resources planning, is vastly different than trying to proscribe uses of water to "control water demand." This term should not be used. If the concept is indeed something other than or seeks to go beyond traditional "demand management" it should be more clearly defined, along with what actions the Council believes would be appropriate to achieve it, and the legal basis for such an intrusive approach.

P 45 L 28: "Ultimately, water supply reliability for ~~the state~~ California will be ~~achieved~~ improved in most locations through primarily local investments in ~~at the regional level through a combination of enhancing~~ sustainable water management and where local resource options are available, regional self-reliance. ~~and water balance, and~~ However, improving conveyance and expanding storage capacity (surface and groundwater) throughout the State must also be achieved to facilitate and optimize these local investments."

P 46 L 18: "...improve regional self-reliance and ~~help achieve~~ contribute to the coequal goals in the near term."

P 46 L 21: Per previous comment, use of "dependency" rather than "reliance" is inappropriate. Additionally, the notion of "self-sufficiency" in areas of the state utilizing imported water supplies is nonsensical considering the level of development already in place and consequently the term should not be used. In addition, the concept is inapplicable in the upstream areas because virtually all consumptive uses of water will affect Delta inflows. While water management actions in these regions may reduce diversions which would otherwise reach the Delta, they will not change relative reliance.

P 46 L 31: Estimates are that local water resource investments over the last couple of decades, including those resulting from various bond expenditures leveraging local dollars, has yielded approximately 2 million acre feet of "new" water supplies. This should be noted in the Plan.

P 47 L 12: "...self-reliance in order to reduce reliance on the Delta to meet future water supply needs ~~and achieve the coequal goals.~~" Because the Act does not link § 85021 to those activities "inherent" in achieving the coequal goals (§ 85020), such a linkage should not be made in the Delta Plan.

P 47 L 15: As written, this reflects significant overreach with regard to the asserted relationship of “covered actions” to activities taken outside the Delta and the “policy” should be deleted. The concept of using IRWMP and UWMP processes to gauge water supply reliability and process toward development of local capacity to meet future water supply needs could be useful if carried forward as a recommendation. However, in the context of the Council’s authority pertaining to “covered actions”, the “action” involving exports and transfers is the movement of the water itself which is subject to the regulatory purview and approval of the SWRCB and thus explicitly exempt from the definition of “covered actions” under the Delta Reform Act. Furthermore, the assessment of the appropriateness and efficacy of local investments are not within the scope of the Council’s authorities or expertise. It is also important that whenever the “export of water” is mentioned as a potential “covered action”, the Plan must differentiate between exports authorized under existing contracts and any that might be sought to occur above and beyond the levels contracted for, subject to SWRCB and ESA limitations. In addition, such a condition, if it were to be maintained, must include increases of water exported from the watershed and not just from the Delta. The inclusion of transfers as a trigger is also quite problematic because all transfers are intended to help achieve improved water supply reliability, while permit conditions imposed by the SWRCB or a CEQA review are designed to ensure mitigation of environmental impacts, thus resulting in no detrimental impact to the other coequal goal . An unintended consequence, as well, would be to prohibit transfers or delivery of supplies in the Delta to serve habitat and wetland restoration projects. Consequently, it is unclear why even the mention of transfers needs to be included and should be deleted. Of additional concern is that this policy represents an unfortunate example of the Council’s attempt to bootstrap asserted covered actions in the Delta to reach into the decisions of local agencies hundreds of miles away, which was not authorized by the Delta Reform Act and is at its core detrimental to achievement of one of the co-equal goals.

P 47 L 23: The development of a “Water Sustainability Element” to be reported as part of agency planning has merit. Before jumping to trying to “enforce” some vague level of achievement by tying such efforts to covered actions related to moving water through and from the Delta, which could very well have the effect of chilling activities related to furthering the water supply reliability prong of the coequal goals even when the ecosystem prong isn’t implicated because of permitting requirements, the Council should instead limit itself to the recommendation that DWR work with stakeholders to develop the guidelines for such an element, include this data in the State Water Plan updates as a way to measure progress to reducing reliance on the Delta to meet future water supply needs [Delta Reform Act § 85021], and revisit the issue during a Delta Plan update to determine if further actions are necessary.

P 47 L 27: “...are improving regional self-reliance ~~and reducing dependence on the Delta~~ through...”

P 47 L 31: Instead of using “six-months” as some magic term without any basis of analysis of the implications of such a standard, the fact is that if there is a disruption in deliveries from the Delta because of a catastrophic failure, such an outage could last much longer. The consequences of such an outage would vary widely depending on location within the export area. Most, if not all, agencies in the export service areas already undertake contingency planning. It would make better sense to seek a regular reporting as part of UWMPs and IRWMPs as to expected agency actions in the event of an outage of more than a 50% reduction in imported water deliveries lasting six, twelve or eighteen months.

P 47 L 37: "...to the improvement of regional self-reliance ~~and reduced dependence~~ on the Delta, including..."

P 47 L 39, 40, 42: The groundwater and related activities in particular, as well as the other listed infrastructure dependent actions, are not going to be applicable everywhere so it would make sense to add "where applicable". This is also true for lines 1 and 2 on page 48.

P 48 L 3: We are skeptical that the "water balance" concept as envisioned here would actually contribute much to water management and would not be simply redundant to regular and contingency planning that already occurs at water agencies throughout California. If carried forward, this concept needs additional specificity and particularly must identify how imported water supplies are expected to be incorporated into the "regional water balance" evaluation and what level of "sustainability" will be applied to such supplies. Any assessment program must acknowledge and allow for the fact that certain regions of the state are not capable of achieving a "regional water balance" unless supplies imported from the Delta are included in the definition of supply within the particular hydrologic region being assessed. It would be helpful as well, if the Plan would articulate the purpose of the exercise, which will not be cheap or quick to undertake. This comes across as an unnecessary academic exercise and it should be removed.

P 48 L 13: Is the expectation that these rate structures will be in place at all times or able to be enacted during times of shortage or drought? Based on differences in water supply portfolios there will be different pressures on supplies and pricing as a tool in different agencies at different times. As a recommendation this is something the Council can urge the Legislature to consider, however, as a proposed policy mandate with ramifications for non-compliance, is another example of a level of intrusiveness into local agency decision making and independence that is unauthorized by the Delta Reform Act. In addition, what do the words even mean?

P 48 L 26: "...self-reliance ~~and reduced dependence~~ on the Delta."

P 48 L 31: "...self-reliance ~~and reduced dependence~~ on Delta diversions)."

P 49 L 10 WR R3: Assuming for the sake of argument this is more than a recommendation in search of a problem, why is this limited to the SWP rather than any potential user of water within the watershed? A new point of delivery within the SWP is not the same as an increased demand. New points of diversion may be necessary to execute conjunctive use programs, assist with system hydraulic issues, provide agency interconnections and otherwise increase system reliability – a coequal goal. In addition, this needs clarification as to applicability to water delivered under current contracts or if this is only intended to be applicable to new demands on the system beyond present contract amounts. What's the baseline? What is the definition of "increased demand"?

P 50 L 13: We agree the Board should carry out its process to update the WQCP for the Bay Delta. However, all of these "policies" should be deleted or be revised to be recommendations, consistent with the reservation of all Board authorities to the Board and no delegation to the Council whatsoever. Even as recommendations, the language must be revised: "...adopt ~~and implement flow~~ water quality objectives ~~that are necessary to achieve~~ to contribute to the achievement of the coequal goals." While the SWRCB may complete an update to the Bay Delta WQCP by 2014, history demonstrates it is highly unlikely (impossible?) that it could complete the water rights decision necessary to "implement" it by that date. They are two different and distinct processes. In addition, much more will be necessary than

a potential revision of the SWRCB's WQCP to "achieve the coequal goals". The Council should be recommending to the Board that it use its full array of powers to address all stressors on the ecosystem within its scope of authority. The problematic and inaccurate use of the words "flow criteria" and "flows" also applies to lines 15 and 16.

P 50 L 20: All three "options" are inappropriate and inconsistent with the Council's mandate and authorities, as well as an intrusion into SWRCB jurisdiction which is explicitly prohibited by the Delta Reform Act. They should all be deleted from the next draft.

P 51 L 38: The discussion of overdraft is overblown. There is not chronic overdraft "statewide". There are localized areas of overdraft (as noted on page 53, line 25) and most of the 2 million acre-feet cited occur in the Tulare region. The satellite measurements referenced only reflect space in the aquifers as determined by gravity measurements; they do not reflect subsidence or overdraft necessarily. The USGS data is more refined than the Famiglietti report.

P 52 L 16-26: This discussion misrepresents the process related to contracts involving water from the State Water Project, when it is asserted that "These documents are not developed through an open and transparent public process." In fact, DWR issued "Principles Regarding Public Participation in State Water Project Contract Negotiations" (see <http://www.water.ca.gov/swpao/docs/notices/03-10.pdf>) in July 2003, which establishes the following requirements related to SWP Contract Negotiations:

1. "Negotiations will be conducted in public.
2. The public will be provided with advance notice of the time and place of the negotiations.
3. The public will be provided the opportunity to observe negotiations and comment in each negotiating session."

These requirements are in addition to the public review process that occurs when Contract Amendments require review under the California Environmental Quality Act (CEQA). We believe that these principles, combined with CEQA review, are functionally equivalent to the public process employed by the U.S. Bureau of Reclamation for Central Valley Project water supply contracts. In any case, there is no reason for California to follow a process developed by the federal government, for federal contracts, when the state has an existing process for its contracts.

P 52 L 30 WR P 5: The basis of this policy as applicable to contracts and transfer agreements as "covered actions" is unclear and in our view nonexistent. The "action" is the movement of the water itself which is subject to regulatory action of the SWRCB and thus explicitly exempt from the definition of "covered actions" under the Delta Reform Act. Even assuming some legitimate basis for even recommending this redundant and unnecessary process, the Council has no authority to make a "policy" regarding such contracts. This policy should be deleted.

P 54 L 9: We encourage additional review of the recommendations made in the Association of California Water Agencies' Groundwater Framework for inclusion in the Delta Plan. There are many other obstacles to be removed and potential opportunities to be promoted for improving groundwater management throughout California, which would contribute to the achievement of the coequal goals. As one powerful example, the Council should recommend that the SWRCB consider the recharge of surface water as a beneficial use of water, or alternatively that the Legislature declare it so.

P 54 L 33: “Improved Regional ~~Self-Sufficiency~~ Self-Reliance:” There’s no such thing as regional self-sufficiency in the export areas, nor is there in the upstream areas that does not affect the Delta.

P 54 L 38: Reduced ~~dependence~~ reliance on the Delta

P 54 L 39: “...reducing ~~dependence~~ reliance on the Delta”

P 55 L 7: Suggest adding SB 1938 plans to the mix along with AB 3030.

P 66 L 35: “...over the last 160 years. The resultant ~~rapid~~ **reduction in the extent, quality, and diversity of estuarine habitats....**” [160 years isn’t “rapid” in society’s timeframe.]

P 68 L 18: Predation control/reduction is conspicuous in its absence as a strategy for reducing threats and stresses. A section discussing the issue and recommendations regarding actions to reduce predation should be added.

P 69 L 31: “...the Council will proceed with developing ecosystem and conveyance planning recommendations...” The recommendations will not exist and will only need to be developed if the deadline is not met.

P 70 L 23: “...for wild, Central Valley salmonids ~~anadromous fishes~~” Since striped bass, a non-native predator, was the subject of a doubling policy, it is assumed the Council does not support the continuation of that doubling policy? §85302(c)(5) only calls out salmon as well.

P 88 L 6: Suggest adding the Delta Counties Hazard Mitigation Study presently being developed.

P 91 L 8: RR P4 is unclear what “Actions” are meant to be addressed by this policy and more specificity needs to be provided.

P 92 L 22: “The ~~State~~ Council is required to promote...”

P 101 L 18: “...protected and enhanced consistent with the achievement of the coequal goals.”

P 102 L 2: Suggest including the Delta Protection Commission’s Land Use/Resource Management Plan too.

P 110 L 8: “...flood risks, and ~~needed~~ ecosystem improvements being implemented pursuant to existing mitigation commitments of the SWP and CVP ~~to reduce damage by operations of the existing export pumps in the Delta.~~”

P 111 L 3: “...export facility and the associated Delta ecosystem mitigation...law. Habitat and ecosystem restoration activities, beyond mitigation requirements, are considered to provide a general benefit to the State and should be funded accordingly.”

Appendix 1, Page 7, Section 23: We reiterate our previously stated objection to the standard of review the Council has asserted for itself for review of the Department of Fish and Game's certification of the Bay Delta Conservation Plan should that certification be appealed to the Council pursuant to section 85320 of the Delta Reform Act. The Council should base its review of an appeal on the *Chevron* administrative review standard and not the "preponderance of the evidence" standard it has adopted for itself.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Byron M. Buck". The signature is fluid and cursive, with a long horizontal stroke at the end.

Byron M. Buck
Executive Director